
(2005) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 889 of 1996

Ram Bahori

APPELLANT

Vs

Tata Finance Ltd. and others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2005) 3 MPLJ 106

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : P.N. Pathak, for the Appellant; S.K. Shrivastava, for the Respondent

Judgement

A.K. Shrivastava, J.

This appeal has been preferred by plaintiff against the impugned order of the trial Court returning the plaint to him for filing it in the proper Court.

A suit for declaration and injunction has been filed by plaintiff praying therein that the proceedings dated 27-11-1992 by which the impugned truck was seized by defendants be declared illegal and arbitrary and it be also declared that the loss which had occurred to the plaintiff is liable to be deducted in terms of monthly instalment. The plaintiff further sought relief of injunction that defendants be restrained by taking the law in their own hands in order to seize the impugned truck by unlawful means.

In brief, the case of the plaintiff/appellant is that he bought one Tata Truck bearing registration No. M.P.I7-A/2270 from respondent No. 3 on 17-2-1992. The said truck was partly financed by the Tata Finance and the plaintiff was required to pay a monthly instalment of Rs. 15,200/- as against the price of the truck Rs. 3,71,228/-. The appellant had already paid a sum of Rs. 2,08,637/- to the respondent and spent Rs. 85,000/- in the construction of the body of the truck. On account of certain unavoidable circumstances which are mentioned in the plaint, there was some default/in making the payment of monthly instalment.

Eventually, one employee of respondent-company Shri Harsh Vardhan Singh, illegally and in a high-handed manner took forceful possession of the appellant's truck on 25-8-1992 and kept it at Rewa for sometime. Thereafter, on the orders of the General Manager, the truck was released on 4-9-1992. As per the averments made in the plaint thereafter the plaintiff paid one more instalment of Rs. 15,200/- but again the said truck was seized by the respondents on 27-11-1992 and took it to Jabalpur.

The defendants filed joint written statement and, inter-alia, resisted the suit on the ground that there is an agreement arrived at between the parties dated 17-2-1992 and according to clause-25 thereof, if any dispute differences and/or claims arising out of the parties or as to the constructions, meaning or effect thereof or as to the rights and liabilities of the parties, shall be settled by arbitration to be held in Bombay in accordance with the provisions of the Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole arbitration of a person to be nominated by the owners. The award of the arbitrator shall be final and binding on all parties concerned and may be made a rule of the High Court of Judicature at Bombay or any other Court of competent jurisdiction within the city of Bombay. It has been prayed by the defendants that suit be dismissed.

The trial Court framed preliminary issue in regard to the jurisdiction of the Court. The trial Court on the basis of clause-25 came to hold that the Court at Rewa had no territorial jurisdiction over the matter in dispute and the matter is required to be referred to the arbitrator and hence returned the plaint to the plaintiff to file it before the proper forum. Hence this appeal.

In this appeal Shri P. N. Pathak, learned counsel for the appellant, by inviting my attention to the averments made in the plaint, has submitted that the impugned order is manifestly erroneous inasmuch as the Court below failed to consider the important aspect of the matter that on account of tortuous action of the respondents/defendants the suit for declaration and injunction was filed in the Court at Rewa. According to learned counsel, the Bombay Court had the jurisdiction in view of the agreement and arbitration clause. But, the case of appellant is not based on the agreement or for the breach of any condition of the agreement. According to learned counsel, indeed, the suit has been filed against illegal action of the defendants taking forceful and illegal possession of the impugned truck without permission from the competent authority and, therefore, the Rewa Court has jurisdiction to entertain the suit. In support of his contention, learned counsel has placed heavy reliance to the Single Bench decision of this Court in Raigarh Jute and Textile Mills Ltd. vs. New Haryana Transport Co., 1994 MPU 626. On the other hand Shri S. K. Shrivastava, learned counsel for the respondents, has placed reliance to the decision of Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, and submitted that the appeal be dismissed.

After having heard learned counsel for the parties I am of the view that this

petition deserves to be allowed.

There is no dispute that there is an agreement between the parties. It is no doubt, true, that if any dispute or any differences and/or claims arising out of the agreement or as to the construction, meaning or effect of the agreement, the matter would be referred to the sole arbitrator at Bombay. Here the plaintiff is challenging the tortuous action of the defendants that by taking the law in their own hands, without obtaining any order from the competent Court, they forcefully had taken away the truck from the possession of the plaintiff and this action of defendants is being challenged by the plaintiff in the instant suit. There is no quarrel to the preposition laid down by the Supreme Court in the case of Athmanathaswami Devasthanam (supra). Learned counsel for the appellant also did not dispute that if the Civil Court is not having any jurisdiction over the subject-matter of the suit, it cannot decide any question on merit. It can simply decide the question of jurisdiction and can return the plaint for proper presentation before the proper Court if it is found to be without jurisdiction. But, here the moot question to be decided is that whether any tortuous action has been committed by the defendants or their employees. From this angle I have perused the plaint and on going through the averments specially para-8, it is revealed that there is a specific pleading of the plaintiff in regard to the tortuous action of the defendants. According to plaintiff, by taking the law in their own hands, they had seized the truck from the possession of plaintiff on 27-11-1992. Thus, if the suit is based on the tortuous action of the defendants, according to me, the decision and ratio decidendi of the case of Raigarh Jute (supra) is set in motion, in the said decision P. P. Naolekar, J. as his Lordship then was, while considering the tortuous action of defendants and the scope of section 20, CPC came to hold that the Court at Raigarh was having jurisdiction and the Court below, which returned the plaint to the plaintiff for proper presentation at Calcutta, was found to be illegal and set it aside. His Lordship, while arriving at the finding, placed reliance on the decision of the Supreme Court in the case of Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), . It would be appropriate to quote paras-6 and 7 of the decision of Raigarh Jute (supra) which reads thus ;

According to me, the plaintiff has based his case for value of the goods wrongfully detained by the defendant/respondent which is an act of conversion. An act of conversion may be committed -

When property is wrongfully taken.

When it is wrongfully parted with.

When it is wrongfully sold.

When it is wrongfully retained.

When it is wrongfully destroyed.

When there is a denial of the lawful owner's right.

A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. In *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, the Supreme Court has held that -

A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. If a carrier or other bailee wrongfully and mistakenly delivers the chattel to the wrong person or refuses to deliver it to the right person, he can be sued as for a conversion. Every person is guilty of a conversion, who without lawful justification, deprives a person of his goods by delivering them to some one else so as to change the possession.

When a person holds a possession of another's chattel and refuses to deliver it or fails to deliver it in spite of notice, the act will amount to assertion of a right inconsistent with the general domain over it, and the use which at all times, and in all places, he is entitled to make of it, and consequently amounts to an act of conversion. An act of conversion is an act of tort and the plaintiff can base his case on torts of conversion which is torts to immovable property. In *Sukul Brothers vs. H. K. Kavarana*, AIR 1958 Cat. 730, the learned Judges, Justice S. R. Das Gupta and R. S. Bachawat, JJ, have held :

The duties and obligations of a common carrier are governed by the English Common Law as modified by the provisions of the Indian Carriers Act. By the common law a common carrier is bound to deliver the goods within a reasonable time and to insure their safety during their carriage and until delivery; act of God and the King's enemies only excepted. The obligation is not founded upon contract, but on the exercise of public employment for reward. The duty arises irrespective of the contract. The owner of the goods may sue the common carrier for breach of the common law duty in an action of tort.

Where there is a contract between the owner and the carrier the owner may sue the carrier either on contract or in tort at his option." If the decision of the case of *Raigarh Jute (supra)* is tested on the touchstone of the present case, it is revealed that ratio decidendi of the case of *Raigarh Jute (supra)* squarely covers the point in hand.

In the result, this appeal succeeds and is hereby allowed. The impugned order is hereby set aside and the trial Court is hereby directed to proceed with the trial of the suit. Looking to the facts and circumstances, the parties are directed to bear their own costs.